

**United States Department of Labor
Employees' Compensation Appeals Board**

I.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Antonio, TX, Employer**

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**Docket No. 15-1731
Issued: June 2, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 17, 2015 appellant filed a timely appeal from a June 16, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a bilateral elbow condition causally related to factors of her employment.

FACTUAL HISTORY

On October 27, 2014 appellant, then a 44-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome and tenosynovitis as a result of casing, sorting, and delivering mail, carrying trays and packages, and

¹ 5 U.S.C. § 8101 *et seq.*

pulling down and loading mail in a vehicle for four to six hours per day, five days a week.² She first became aware of her condition on October 27, 2014. Appellant noted that she had undergone three surgeries on her hands and wrists. She explained that she was first diagnosed with bilateral carpal tunnel syndrome on February 21, 2013. Appellant related that even after her surgeries she continued to experience numbness with no strength. She explained that once she resumed limited duty full-time work, performing the same repetitive movements, the pain and numbness had worsened. Appellant did not stop work.

On the reverse side of the claim form, the employing establishment indicated that appellant first reported her condition to her supervisor on November 3, 2014. It controverted her claim because she had an open case under File No. xxxxxx913 for carpal tunnel syndrome. The employing establishment noted that appellant appeared to be claiming an injury to her elbows as her carpal tunnel syndrome was accepted under the prior claim. It challenged fact of injury and causal relationship for her allegations regarding her elbows.

A prescription note dated October 27, 2014 signed by Dr. Keith R. Johnson, a Board-certified orthopedic surgeon, noted a diagnosis of bilateral elbow tendinitis.

In an October 28, 2014 duty status report, Dr. Johnson indicated that appellant sustained bilateral elbow tendinitis due to overuse from carpal tunnel syndrome. He related that appellant could return to work with restrictions on October 23, 2014.

By letter dated November 13, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish her occupational disease claim for her elbows. It advised her to respond to questions on an attached questionnaire in order to substantiate the factual elements of her claim. OWCP also requested additional medical evidence to establish that appellant sustained a diagnosed condition causally related to her employment. Appellant did not provide responses to the questionnaire.

On December 29, 2014 appellant was examined by Robert Martinez, a physician assistant from Dr. Johnson's office, who related in a narrative report that she had been treated for bilateral wrist carpal tunnel syndrome, but was now complaining of elbow pain since June 3, 2014. He found symptoms consistent with tendinitis with extensor carpi radialis brevis or tennis elbow of both elbows. Mr. Martinez noted an ICD-9-CM Diagnosis Code of 354.0 for carpal tunnel syndrome.

In a decision dated January 6, 2015, OWCP denied appellant's claim because she had not established fact of injury. It determined that she failed to provide sufficient factual evidence to establish the employment-related activities she believed contributed to her condition and she also failed to submit sufficient medical evidence to demonstrate a diagnosed condition as a result of her employment.

² The record reveals that appellant has a previously accepted occupational disease claim for bilateral carpal tunnel syndrome under File No. xxxxxx913. On March 7, 2013 appellant filed an occupational disease claim alleging that she first became aware of her carpal tunnel condition on February 21, 2013. She underwent right carpal tunnel release on June 7, 2013 and left carpal tunnel release on September 13, 2013. Appellant returned to limited-duty work four hours per day on August 7, 2014 and full-time, limited-duty work as of October 21, 2014.

On January 20, 2015 OWCP received appellant's request for review of the written record by the Branch of Hearings and Review. Appellant submitted several medical reports regarding her previously accepted bilateral carpal tunnel syndrome claim.

By letter dated January 8, 2015, the employing establishment advised appellant that she was not eligible for light duty and advised her of her options she could select if she believed that she still required work restrictions.

On January 14, 2015 Dr. Johnson referred appellant for work conditioning. He indicated ICD-9-CM Diagnosis Codes of 354.0 for carpal tunnel syndrome and 719.40 for unspecified joint pain.

Mr. Martinez examined appellant again and noted in a February 2, 2015 narrative report that she had experienced bilateral wrist pain for quite some time, which eventually transpired to elbow and shoulder pain. He reported that she was previously treated for bilateral carpal tunnel syndrome and had undergone surgery. Mr. Martinez related that appellant developed pain and weakness to her elbows and shoulders, which transpired from her wrist. He noted that she attempted to go back to work, but was only able to work a day and a half before she quit due to severe pain and weakness. Upon examination, Mr. Martinez observed weakness and pain to both upper extremities, both to appellant's wrists, hands, elbows, and shoulders. He related that an electromyography supported nerve damage and potential nerve recovery. Mr. Martinez diagnosed bilateral carpal tunnel syndrome, bilateral elbow tendinitis, and bilateral shoulder pain. He recommended more therapy and a magnetic resonance imaging (MRI) scan examination.

In a February 18, 2015 MRI scan report, Dr. William M. Boushka, a Board-certified diagnostic radiologist, noted appellant's complaints of bilateral elbow pain. He reported mild edema associated with the common extensor tendon, consistent with lateral epicondylitis, and normal flexors and tendon. Dr. Boushka indicated no tear of the radial or ulnar ligaments. He diagnosed mild lateral epicondylitis.

On March 11, 2015 appellant accepted a modified assignment as a rural carrier. The duties of the modified assignment included casing mail for 2.50 hours and delivering mail for 5.50 hours. The physical requirements involved lifting no more than five pounds, sitting, and standing for one to three hours intermittently, walking for five hours intermittently, and simple grasping for eight hours intermittently.

In an April 23, 2015 letter, Albert Perez, a health and resource management specialist for the employing establishment, responded to appellant's request for review of the written record. He contended that she had not responded to OWCP's questionnaire, and accordingly, had not established the employment factors she believed contributed to her symptoms. Mr. Perez also alleged that appellant failed to submit medical evidence which contained a medical diagnosis and explanation for how her alleged condition resulted from her employment. He noted that the medical reports submitted were signed by a physician assistant, who was not considered a qualified physician under FECA. Mr. Perez related that appellant had a previously accepted claim for bilateral carpal tunnel syndrome under OWCP File No. xxxxxx913 with the date of injury listed as February 21, 2013. He indicated that under that claim she underwent a referee

examination, which concluded that she was able to return to work eight hours a day with a restriction of no lifting over five pounds.

By decision dated June 16, 2015, an OWCP hearing representative affirmed the January 6, 2015 decision, finding that appellant had not met her burden of proof to establish fact of injury. She found that it was unclear as to whether appellant was attributing her elbow condition to her full-time work as a rural carrier prior to her accepted carpal tunnel injury, or to work activities following her October 21, 2014 return to limited duty.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence³ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁴

In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁶ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁷

ANALYSIS

Appellant alleges that she developed a bilateral elbow condition as a result of her employment. In a November 13, 2014 letter, OWCP informed her that additional factual and medical evidence was necessary to establish her claim. It included a questionnaire which requested that appellant describe the employment-related activities, which she believed

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁶ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

contributed to her condition, how often she performed such activities, and for how long they were performed. OWCP also requested a physician's opinion based on examination and medical rationale regarding how her work activities caused or contributed to her alleged medical condition.

Appellant provided various medical notes and narrative reports regarding her treatment for bilateral carpal tunnel syndrome and complaints of worsening bilateral elbow pain. She failed, however, to provide any additional factual evidence, whether through responding to OWCP's questionnaire or furnishing a separate statement, which described in detail the work activities which she believed caused or contributed to her bilateral elbow condition.

To establish a claim for compensation, the Board has held that an employee must submit a statement which identifies the factors of employment believed to have caused his or her condition and submit medical evidence to establish causal relation.⁸ On the October 27, 2014 Form CA-2 appellant claimed that she developed bilateral elbow pain as a result of casing, sorting, and delivering mail, carrying trays and packages, and pulling down and loading mail in the vehicle. She did not provide any further details describing her work activities, how often she performed these activities, or for how long she performed them. Furthermore, as noted by the hearing representative, appellant did not clarify whether her alleged elbow condition was due to her full-time work activities prior to her accepted carpal tunnel injury, or to her work duties following her return to limited duty on August 7, 2014. Accordingly, the Board finds that she failed to describe the employment factors alleged to have caused or contributed to her alleged overuse injury to her elbows.⁹

The medical evidence from Dr. Johnson dated October 27 and 28, 2014 and January 14, 2015 noted diagnoses of bilateral elbow tendinitis and recommended more physical therapy. His reports, however, do not mention any of appellant's work factors nor describe any employment duties which may have caused or contributed to her elbow condition. Likewise, Dr. Boushka's February 18, 2015 MRI scan report contains only a diagnosis of mild lateral epicondylitis without any discussion of her employment duties. None of these medical reports provide a detailed description of the employment factors alleged to have caused or contributed to appellant's alleged elbow condition. Accordingly, they fail to establish fact of injury.

The record also contains narrative reports dated December 29, 2014 and February 2, 2015 by Mr. Martinez, a physician assistant. As Mr. Martinez is not considered a physician as defined under FECA, his reports are of no probative medical value.¹⁰ A report from a lay individual can, however, corroborate nonmedical factual matters.¹¹ However, the reports from Dr. Martinez did not clarify or corroborate appellant's alleged factors of employment.

⁸ *Donald W. Wenzel*, 56 ECAB 390 (2005); *Richard H. Weiss*, 47 ECAB 182 (1995).

⁹ *See A.S.*, Docket No. 14-1983 (issued January 14, 2015).

¹⁰ 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹¹ *See generally Thelma Rogers*, 42 ECAB 866 (1991) wherein a nurse's notes corroborated appellant's history of injury; and *see generally Jerre R. Rinehart*, 45 ECAB 518 (1994).

On appeal, appellant alleges that she has reported all her symptoms to her doctor since her surgeries and to management after she returned to work. She explained that there was no light duty for rural carriers and she tried to return to her regular duties with restrictions. Appellant notes that her treating physician took her off work to and referred her to a pain management specialist. Her statement, however, does not provide sufficient detail describing the specific employment factors she believed attributed to her alleged bilateral elbow condition. As appellant has not established the employment factors alleged to have caused her claimed condition, she has not met her burden of proof to establish her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish a bilateral elbow condition causally related to factors of her employment.

ORDER

IT IS HEREBY ORDERED THAT the June 16, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 2, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board